

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF1132
)	EEOC NO.: 21BA90146
EDDIE WALKER)	ALS NO.: 10-0154
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert S. Enriquez, Greg Simoncini and Marti Baricevic presiding, upon Eddie Walker's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CF1132; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. The Petitioner was employed by Rock Valley Industries ("Employer") as a Cleaner. On October 7, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the Employer discharged him on May 13, 2008, because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On February 4, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On March 1, 2010, the Petitioner timely filed this Request.
2. The Employer is a janitorial service which provides cleaning services to customers at the customers' facilities. During the time alleged in the Petitioner's charge, the Employer had in place a dress code which required employees to wear their uniform and identification badge at all times. The first violation of this policy would result in a warning. A second violation could result in dismissal.
3. The Employer documented several alleged instances of work policy violations by the Petitioner. On August 1, 2007, the Employer determined the Petitioner used profane language

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

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in an argument with his supervisor. On April 4, 2008, the Employer documented the Petitioner's unauthorized departure from work. On April 9, 2008, the Employer determined the Petitioner had arrived to work out of uniform in violation of its dress code. Finally, on May 13, 2008, the Employer determined the Petitioner had again arrived to work out of uniform and used profane language toward his supervisor.

4. The Employer discharged the Petitioner on May 13, 2008. The Employer stated it discharged the Petitioner because he verbally abused a supervisor and violated its dress code.
5. As a result of its investigation, the Respondent determined the Employer had terminated a non-Black employee for using profane language toward a supervisor.
6. In his Request, the Petitioner argues that the Respondent's investigator was biased against him, that the investigator failed to interview key witnesses, and that the investigator confused the names of witnesses.
7. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues the Petitioner failed to establish a *prima facie* case of race discrimination because there was no evidence the Petitioner was treated less favorably than similarly situated co-workers outside the Petitioner's protected class under similar circumstances. The Respondent also argues there was no substantial evidence the Employer's legitimate, articulated reason for discharging the Petitioner was a pretext for race discrimination.

CONCLUSION

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS § 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258 (March 7, 1995).

In this case, there has been no evidence presented from which a reasonable mind could conclude the Petitioner was discharged because of his race. The Employer documented various instances of work policy violations by the Petitioner prior to discharging him. Further, the Respondent determined the Employer had also terminated a non-Black employee for using profane language toward a supervisor. There is no substantial evidence the Employer treated a non-Black employee more favorably than the Petitioner under similar circumstances.

Assuming *arguendo* the evidence was sufficient to establish a *prima facie* case of discrimination, the Employer articulated a legitimate, non-discriminatory reason for its employment action. There is no substantial evidence this was a pretext for race discrimination. In the absence of

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any evidence of pretext, the Commission cannot substitute its judgment for the Employer's. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Rock Valley Industries, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 18th day of November 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini